

# SENATE BILL REPORT

## SB 5013

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As of January 17, 2011

**Title:** An act relating to the use of hearing examiners or local planning officials in a quasi-judicial land use permit process.

**Brief Description:** Addressing the use of hearing examiners or local planning officials in a quasi-judicial land use permit process.

**Sponsors:** Senator White.

**Brief History:**

**Committee Activity:** Government Operations, Tribal Relations & Elections: 1/17/11.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

**Staff:** Karen Epps (786-7424)

**Background:** The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous planning requirements for counties and cities obligated by mandate or choice to fully plan under the GMA, and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, currently plan under GMA. Additionally, GMA cities and counties must establish an integrated and consolidated project permit process.

Cities and counties may contract with or hire a hearing examiner to conduct quasi-judicial hearings for decisions such as land development project applications or administrative appeals of land use decisions. A hearing examiner conducts quasi-judicial hearings usually in place of the local legislative authority such as the board of county commissioners or the city council.

**Summary of Bill:** A local government that has a population of 10,000 or greater and is planning under GMA must adopt an ordinance that requires all quasi-judicial permits be decided by either the planning official or director at the local government or a hearing examiner. A local government may adopt an ordinance opting out of this requirement. A local government may require a permit applicant to reimburse the local government for the

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costs of using a hearing examiner. Issuance of the hearing examiner's decision may be delayed beyond ten days until the local government is reimbursed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill evidences the planners preference for hearing examiners. Many of the cities and counties that currently have them are very pleased with them. In order to not burden small jurisdictions, there is an opt-out provision. The bill gives local governments nine months to decide if they want to adopt an ordinance that requires the use of hearing examiners. This bill is mostly about trying to promote the use of hearing examiners in local jurisdictions in order to give an appearance of fairness. This bill provides flexibility and does not require a local government to change their current system. With the encouragement of hearing examiner, there needs to be greater standards for impartiality.

OTHER: The intent section has a very laudable goal, to create a more timely, fair, and predictable permit process. The bill requires a local government to adopt an ordinance requiring the use of hearing examiners and then it goes back and says that a local government can turn around and adopt another ordinance to opt-out of this requirement. There are concerns about the costs and fees associated with the use of a hearing examiner being passed to the applicant in the bill. This bill would impact 70 cities in Washington. Many of those cities, but not all, currently employ hearing examiners to make quasi-judicial decisions. The cities who use hearing examiners know that this is a good process, especially in light of the fact that when professionals make decisions they are less frequently appealed. Litigation costs are reduced when hearing examiners are used. Some cities want to continue to make decisions themselves. This bill says local government should use hearing examiners, but it is not a requirement. Some counties use hearing examiners and others do not, it is a local option. This will impact nine counties that currently do not use hearing examiners. It is critical that local governments retain the right to decide whether or not to use a hearing examiner system. Sometimes it is a budget consideration for the local government. The opt-out time period is a relatively short period of time and there is no way to then switch to another system.

**Persons Testifying:** PRO: Michael Shaw, American Planning Association; April Putney, Futurewise.

OTHER: Chris McCabe, Association of Washington Business; Dave Williams, Association of Washington Cities; Josh Weiss, Washington Association of Counties; Scott Hildebrand, Master Builders Association of King and Snohomish County.